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Attorneys for Plaintiffs, Thomas Wheeler & Beth Wheeler

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Thomas Wheeler and Beth Wheeler,
on behalf of themselves and all other
members of the general public
similarly situated,

Plaintiffs,

vs.

BEDDING PROS LLC d/b/a/ US-
MATTRESS, and DOES 1-10
Inclusive,

Defendant.

Case No.

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*),
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*) and,
- (3) Violation of Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*)

Jury Trial Demanded

1 Plaintiffs Thomas Wheeler and Beth Wheeler (“Plaintiffs”), on behalf of
2 themselves and all other members of the public similarly situated, alleges as
3 follows:

4 **NATURE OF THE ACTION**

5 1. Plaintiffs bring this class action Complaint against Defendant
6 BEDDING PROS LLC d/b/a US-MATTRESS (hereinafter “Defendant” or “US
7 Mattress”) to stop Defendant’s practice of falsely advertising that they will provide
8 a “100 Night In-Home Trial” for purchases of their mattresses, implying that
9 consumers have 100 days to try out and return the product if dissatisfied, when in
10 fact they had no intention to honor this advertisement and to obtain redress for a
11 nationwide class of consumers (“Class Members”) who were misled, within the
12 applicable statute of limitations period, by Defendant.

13 2. Defendant prominently advertised to consumers that their mattresses
14 came with a “100 Night In-Home Trial” for the purchase of their mattresses (“the
15 Class Products”).

16 3. Plaintiffs and others similarly situated viewed and relied on these
17 advertisements on Defendant’s webpages, which continue to carry these
18 advertisements to this day

19 4. Defendant misrepresented and falsely advertised to Plaintiffs and
20 others similarly situated that they would provide a “100 Night In-Home Trial” to
21 ensure customers were satisfied with the mattresses.

22 5. Defendant’s misrepresentations to Plaintiffs and others similarly
23 situated caused them to purchase mattresses from Defendant, and then to pay
24 additional money to Defendant in order to further exchange the mattresses once it
25 was discovered that there was no “100 Night In-Home Trial” that provided a
26 refund.

27 6. Defendant took advantage of Plaintiffs and similarly situated
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1 consumers unfairly and unlawfully.

2 **JURISDICTION AND VENUE**

3 7. This class action is brought pursuant to Federal Rule of Civil
4 Procedure 23.

5 8. This matter is properly venued in the United States District Court for
6 the Central District of California, in that Defendant does business in the Central
7 District of California. A substantial portion of the events giving rise to Defendant's
8 liability took place in this district.

9 9. There is original federal subject matter jurisdiction over this matter
10 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.
11 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the
12 original jurisdiction of federal courts in any class action in which at least 100
13 members are in the proposed plaintiff class, any member of the plaintiff class is a
14 citizen of a State different from the State of citizenship of any defendant, and the
15 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and
16 costs.

17 10. In the case at bar, there are at least 100 members in the proposed
18 Class, the total claims of the proposed Class members are in excess of
19 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff seeks
20 to represent a nationwide class of consumers, establishing minimum diversity.

21 **THE PARTIES**

22 11. Plaintiff THOMAS WHEELER is a citizen and resident of the State
23 of California, County of Orange.

24 12. Plaintiff BETH WHEELER is a citizen and resident of the State of
25 California, County of San Diego.

26 13. Defendant BEDDING PROS LLC d/b/a US-MATTRESS is a
27 Michigan limited liability company that does business in California, including in
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1 Orange County, that is incorporated in Michigan and has its headquarters in
2 Michigan.

3 14. Plaintiffs are informed and believe, and thereon alleges, that at all
4 time relevant, Defendant's sales of products and services are governed by the
5 controlling law in the state in which they do business and from which the sales of
6 products and services, and the allegedly unlawful acts occurred, which is
7 California.

8 15. Plaintiffs are informed and believe, and thereon alleges, that each and
9 all of the acts and omissions alleged herein were performed by, or is attributable
10 to, Defendant and/or its employees, agents, and/or third parties acting on its behalf,
11 each acting as the agent for the other, with legal authority to act on the other's
12 behalf. The acts of any and all of Defendant's employees, agents, and/or third
13 parties acting on its behalf, were in accordance with, and represent, the official
14 policy of Defendant.

15 16. Plaintiffs are informed and believe, and thereon alleges, that said
16 Defendants are in some manner intentionally, negligently, or otherwise
17 responsible for the acts, omissions, occurrences, and transactions of each and all
18 their employees, agents, and/or third parties acting on their behalf, in proximately
19 causing the damages herein alleged.

20 17. At all relevant times, Defendant ratified each and every act or
21 omission complained of herein. At all relevant times, Defendant, aided and
22 abetted the acts and omissions as alleged herein.

23 **PLAINTIFF'S FACTS**

24 18. In or around February 17, 2016, Plaintiffs were viewing Defendant's
25 website, US-Mattress.com, because they were interested in purchasing a new bed
26 for a bedroom in Plaintiffs' house.

27 19. Additionally, Defendant was running a sale in order to further induce
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1 Plaintiffs and other consumers to purchase mattresses from Defendant in a limited
2 time period.

3 20. After browsing Defendant's website and comparing the prices and
4 features against other comparable providers, Plaintiffs decided to purchase a Class
5 Product from Defendant, in particular a Phillipsburg II Luxury Firm Mattress.

6 21. The decision to purchase the Class Product from Defendant was
7 materially based on Defendant's representation on the advertising for the Class
8 Product, and on its website generally, that the Class Products came with a "100
9 Night In-Home Trial."

10 22. A true and correct screenshot of the specific webpage for the Class
11 Product purchased by Plaintiffs and advertisement contained therein is as follows:



22 23. A true and correct screenshot of the homepage of Defendant's website
23 which includes this advertisement is as follows:
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24. Neither webpage on its face lists, and both require additional clicks in order to be presented with the specific terms of the “100 Night In-Home Trial,” and instead the limited graphic present on both pages is the only advertisement and representation made to consumers. There is no * or other character pointing Plaintiffs and other consumers to further be advised of the terms of the promise.

25. On the cart and check-out pages, there are no listed terms and conditions or boxes that must be checked which state that Plaintiffs, and consumers similarly situated to Plaintiffs, agree to any terms and conditions. Further, there is no hyperlink or direction in the body of those webpages directing individuals as to what terms and conditions exist.

26. Even in the email received by Plaintiffs following purchase of the Class Product, there were no terms and conditions listed or linked to governing the purchase of the Class Products and the “100 Night In-Home Trial” or return policy of Defendant.

27. Upon receiving the Class Product from Defendant, Plaintiffs were immediately dissatisfied with the size of the Class Product and contacted Defendant about obtaining a return or exchange of the Class Product pursuant to

1 the “100 Night In-Home Trial” guarantee. It was at this point that Defendant
2 informed Plaintiffs that despite Defendant’s upfront advertisement and
3 representations, “**Mattresses are non-returnable**” and that Defendant would
4 instead charge Plaintiffs a significant fee to exchange the Class Product for another
5 Class Product from Defendant.

6 28. Further, because the sale during which Plaintiffs had originally
7 purchased the Class Product had ended, there was a significant upcharge in
8 exchanging it for a comparable mattress as well.

9 29. Plaintiffs were significantly upset by Defendant’s refusal to
10 acknowledge, let alone honor, its “100 Night In-Home Trial” advertisement and
11 instead was forced to pay a significant premium in order to exchange the Class
12 Product, as well as denied the opportunity of a refund at all.

13 30. In total, Plaintiffs were charged \$198 for return shipping on the Class
14 Product as well as an additional \$130 for the difference in prices, when based off
15 Defendant’s advertising they should have had to pay \$0 for the return.

16 31. Such sales tactics employed on Defendant rely on falsities and have
17 a tendency to mislead and deceive a reasonable consumer.

18 32. Plaintiffs are informed, believe, and thereupon alleges that such
19 representations were part of a common scheme to mislead consumers and
20 incentivize them to purchase Class Products from Defendant under the false belief
21 that there was a “100 Night In-Home Trial” such that they could return the product
22 if they were dissatisfied.

23 33. Plaintiffs reasonably believed and relied upon Defendant’s
24 representations in its advertisement.

25 34. Plaintiffs materially changed their position by purchasing the Class
26 Product from Defendant, and then paying an additional \$328 to return and
27 exchange the Class Product after discovering that Defendant would not let
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1 Plaintiffs return the Class Product for a refund despite the advertisements.

2 35. Plaintiffs would not have purchased the Class Product from
3 Defendant if they knew that the above-referenced statements made by Defendant
4 were false.

5 36. Had Defendant properly marketed, advertised, and represented that
6 its “100 Night In-Home Trial” was not a trial during which a consumer could
7 return a Class Product if they were dissatisfied but instead that the Class Products
8 were non-returnable at all, Plaintiffs would not have purchased the Class Product
9 from Defendant.

10 37. Defendant benefited from falsely advertising and representing its
11 refund policy and guarantees for the Class Products. Defendant significantly
12 benefited on the loss to Plaintiffs and provided nothing of benefit to Plaintiffs in
13 exchange.

14 **CLASS ACTION ALLEGATIONS**

15 38. Plaintiffs brings this action, on behalf of themselves and all others
16 similarly situated, and thus, seeks class certification under Federal Rule of Civil
17 Procedure 23.

18 39. Plaintiffs seek to represent a Class (the “Class”) defined as follows:

19 All California consumers who purchased a Class Product
20 from Defendant within four years prior to the date of
filing of the Complaint.

21 40. Plaintiffs additionally seek to represent a Sub-Class (the “Sub-Class,”
22 and collectively with the Class, “the Classes”) defined as follows:

23 All California consumers who were charged any
24 exchange fees within one hundred (100) days of the
25 purchase of a Class Product Defendant within four years
prior to the date of filing of the Complaint.

26 41. As used herein, the term “Class Members” shall mean and refer to the
27 members of the Classes described above.

1 42. Excluded from the Classes are Defendant, its affiliates, employees,
2 agents, and attorneys, and the Court.

3 43. Plaintiffs reserve the right to amend the Classes, and to add additional
4 subclasses, if discovery and further investigation reveals such action is warranted.

5 44. Upon information and belief, the proposed Classes are composed of
6 thousands of persons. The members of the class are so numerous that joinder of
7 all members would be unfeasible and impractical.

8 45. No violations alleged in this complaint are contingent on any
9 individualized interaction of any kind between class members and Defendant.

10 46. Rather, all claims in this matter arise from the identical, false,
11 affirmative written statements that Defendant would offer a “100 Night In-Home
12 Trial” and refunds on Class Products to the Classes Members, when in fact, such
13 representations were false.

14 47. There are common questions of law and fact as to the Classes
15 Members that predominate over questions affecting only individual members,
16 including but not limited to:

- 17 (a) Whether Defendant engaged in unlawful, unfair, or deceptive
18 business practices in sending a mailed advertisement
19 advertising prices for its services to Plaintiffs and other Classes
20 Members with no intention of providing them;
21 (b) Whether Defendant made misrepresentations with respect to
22 the guarantees and refund policies of its Class Products;
23 (c) Whether Defendant profited from this advertisement;
24 (d) Whether Defendant violated California Bus. & Prof. Code §
25 17200, *et seq.* California Bus. & Prof. Code § 17500, *et seq.*,
26 and California Civ. Code § 1750, *et seq.*;
27 (e) Whether Plaintiffs and Classes Members are entitled to
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equitable and/or injunctive relief;

(f) Whether Defendant's unlawful, unfair, and/or deceptive practices harmed Plaintiffs and Class Members; and

(g) The method of calculation and extent of damages for Plaintiffs and Class Members.

48. Plaintiffs are a member of the Classes they seek to represent

49. The claims of Plaintiffs are not only typical of all class members, they are identical.

50. All claims of Plaintiffs and the class are based on the exact same legal theories.

51. Plaintiffs have no interest antagonistic to, or in conflict with, the class.

52. Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each Classes Member, because Plaintiffs were induced by Defendant's advertisement during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concerns the same business practices described herein irrespective of where they occurred or were experienced. Plaintiffs' claims are typical of all Classes Members as demonstrated herein.

53. Plaintiffs will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent themselves and the Classes.

54. Common questions will predominate, and there will be no unusual manageability issues.

1 **FIRST CAUSE OF ACTION**

2 **Violation of the California False Advertising Act**

3 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

4 **Individually and on behalf of the Classes**

5 55. Plaintiffs incorporate by reference each allegation set forth above.

6 56. Pursuant to California Business and Professions Code section 17500,
7 *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and
8 which is known, or which by the exercise of reasonable care should be known, to
9 be untrue or misleading...or...to so make or disseminate or cause to be so made or
10 disseminated any such statement as part of a plan or scheme with the intent not to
11 sell that personal property or those services, professional or otherwise, so
12 advertised at the price stated therein, or as so advertised.”

13 57. California Business and Professions Code section 17500, *et seq.*’s
14 prohibition against false advertising extends to the use of false or misleading
15 written statements.

16 58. Defendants misled consumers by making misrepresentations and
17 untrue statements about the guarantees and refund policy of its Class Products,
18 namely, Defendant made consumers believe that there was a “100 Night In-Home
19 Trial” and a satisfaction guarantee that would pertain to the return of the Class
20 Products if consumers were dissatisfied even though this was not the case.

21 59. Defendant knew that its representations and omissions were untrue
22 and misleading, and deliberately made the aforementioned representations and
23 omissions in order to deceive reasonable consumers like Plaintiffs and other
24 Classes Members.

25 60. As a direct and proximate result of Defendant’s misleading and false
26 advertising, Plaintiffs and the other Class Members have suffered injury in fact.
27 Plaintiffs reasonably relied upon Defendant’s representations regarding the “100
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1 Night In-Home Trial” and a satisfaction guarantee that would pertain to the return
2 of the Class Products stated in the advertisements on its website. In reasonable
3 reliance on Defendant’s false advertisements, Plaintiffs and other Classes
4 Members purchased Class Products from Defendant based on this guarantee. In
5 reality, no such guarantee existed and Plaintiffs and other Classes Members were
6 denied the material term of a return policy as Defendant’s actual policy was that
7 Class Products were non-fundable.

8 61. Further, Plaintiffs and Sub-Class Members paid exorbitant exchange
9 fees in order to attempt to receive any benefit at all from the Class Products they
10 purchased as they were unable to return the Class Products if they were dissatisfied
11 with them.

12 62. Plaintiffs allege that these false and misleading written
13 representations made by Defendant constitute a “scheme with the intent not to sell
14 that personal property or those services, professional or otherwise, so advertised
15 at the price stated therein, or as so advertised.”

16 63. Defendant advertised to Plaintiffs and other putative Classes
17 members, through written representations and omissions made by Defendant and
18 its employees.

19 64. Defendant knew that they would not provide Plaintiffs and Classes
20 Members with the guarantee and return policy advertised on its webpage.

21 65. Thus, Defendant knowingly lied to Plaintiffs and other putative
22 Classes members in order to induce them to purchase Class Products from
23 Defendant.

24 66. The misleading and false advertising described herein presents a
25 continuing threat to Plaintiffs and the Class Members in that Defendant persist and
26 continue to engage in these practices, and will not cease doing so unless and until
27 forced to do so by this Court. Defendant’s conduct will continue to cause
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1 irreparable injury to consumers unless enjoined or restrained. Plaintiffs are
2 entitled to preliminary and permanent injunctive relief ordering Defendant to cease
3 its false advertising, as well as disgorgement and restitution to Plaintiffs and all
4 Classes Members of Defendant's revenues associated with their false advertising,
5 or such portion of those revenues as the Court may find equitable.

6 **SECOND CAUSE OF ACTION**

7 **Violation of Unfair Business Practices Act**

8 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

9 **Individually and on behalf of the Classes**

10 67. Plaintiffs incorporate by reference each allegation set forth above.

11 68. Actions for relief under the unfair competition law may be based on
12 any business act or practice that is within the broad definition of the UCL. Such
13 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
14 acts and practices. A plaintiff is required to provide evidence of a causal
15 connection between a defendant's business practices and the alleged harm--that is,
16 evidence that the defendant's conduct caused or was likely to cause substantial
17 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
18 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory
19 definition of unfair competition covers any single act of misconduct, as well as
20 ongoing misconduct.

21 **UNFAIR**

22 69. California Business & Professions Code § 17200 prohibits any
23 "unfair ... business act or practice." Defendant's acts, omissions,
24 misrepresentations, and practices as alleged herein also constitute "unfair"
25 business acts and practices within the meaning of the UCL in that its conduct is
26 substantially injurious to consumers, offends public policy, and is immoral,
27 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs
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1 any alleged benefits attributable to such conduct. There were reasonably available
2 alternatives to further Defendant's legitimate business interests, other than the
3 conduct described herein. Plaintiff reserves the right to allege further conduct
4 which constitutes other unfair business acts or practices. Such conduct is ongoing
5 and continues to this date.

6 70. In order to satisfy the "unfair" prong of the UCL, a consumer must
7 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
8 benefits to consumers or competition; and, (3) is not one that consumers
9 themselves could reasonably have avoided.

10 71. Here, Defendant's conduct has caused and continues to cause
11 substantial injury to Plaintiffs and members of the Classes. Plaintiffs and members
12 of the Classes have suffered injury in fact by purchasing Class Products and being
13 unable to return them based on the advertisements and representations made due
14 to Defendant's decision to mislead consumers. Thus, Defendant's conduct has
15 caused substantial injury to Plaintiff and the members of the Class.

16 72. Moreover, Defendant's conduct as alleged herein solely benefits
17 Defendant while providing no benefit of any kind to any consumer. Such
18 deception utilized by Defendant convinced Plaintiffs and members of the Classes
19 that they could return Defendant's Class Products within one hundred (100) days
20 of purchase if dissatisfied pursuant to the "100 Night In-Home Trial" as advertised
21 on Defendant's webpages, in order to induce them to purchase Class Products from
22 Defendant. In fact, Defendant knew that they had no intention of providing the
23 advertised return policy and guarantee and thus unfairly profited. Thus, the injury
24 suffered by Plaintiffs and the members of the Classes are not outweighed by any
25 countervailing benefits to consumers.

26 73. Finally, the injury suffered by Plaintiffs and members of the Classes
27 is not an injury that these consumers could reasonably have avoided. After
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1 Defendant falsely represented the guarantees and return policy for its Class
2 Products, consumers materially changed their position by purchasing Class
3 Products from Defendant. After doing so and when attempting to exercise the
4 guarantee and return policy, Defendant stated that the Class Products were non-
5 returnable and thus the consumers were stuck with Class Products they did not
6 want, thus causing them to suffer injury in fact. Defendant failed to take
7 reasonable steps to inform Plaintiffs and Classes Members that the prominent
8 advertisements were false. As such, Defendant took advantage of Defendant's
9 position of perceived power in order to deceive Plaintiffs and the Classes.
10 Therefore, the injury suffered by Plaintiffs and members of the Classes is not an
11 injury which these consumers could reasonably have avoided.

12 74. Thus, Defendant's conduct has violated the "unfair" prong of
13 California Business & Professions Code § 17200.

14 **FRAUDULENT**

15 75. California Business & Professions Code § 17200 prohibits any
16 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"
17 prong of the UCL, a consumer must allege that the fraudulent business practice
18 was likely to deceive members of the public.

19 76. The test for "fraud" as contemplated by California Business and
20 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
21 common law fraud, a § 17200 violation can be established even if no one was
22 actually deceived, relied upon the fraudulent practice, or sustained any damage.

23 77. Here, not only were Plaintiffs and the Class members likely to be
24 deceived, but these consumers were actually deceived by Defendant. Such
25 deception is evidenced by the fact that Plaintiffs were denied the ability to return
26 or refund the Class Product pursuant to the "100 Night In-Home Trial" advertised
27 on Defendant's webpages, and instead had to pay significant costs to simply
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1 exchange the Class Product. Plaintiffs' reliance upon Defendant's deceptive
2 statements is reasonable due to the unequal bargaining powers of Defendant
3 against Plaintiffs. For the same reason, it is likely that Defendant's fraudulent
4 business practice would deceive other members of the public.

5 78. As explained above, Defendant deceived Plaintiffs and other Classes
6 Members by misrepresenting its return policy and guarantees.

7 79. Thus, Defendant's conduct has violated the "fraudulent" prong of
8 California Business & Professions Code § 17200.

9 UNLAWFUL

10 80. California Business and Professions Code Section 17200, et seq.
11 prohibits "any unlawful...business act or practice."

12 81. As explained above, Defendant deceived Plaintiffs and other Class
13 Members by falsely representing its guarantees and return policy for the Class
14 Products.

15 82. Defendant used false advertising, marketing, and misrepresentations
16 to induce Plaintiffs and Class Members to purchase Class Products from
17 Defendant, in violation of California Business and Professions Code Section
18 17500, et seq. Had Defendant not falsely advertised, marketed or misrepresented
19 its return policy and guarantees, Plaintiffs and Classes Members would not have
20 purchased Class Products from Defendant. Defendant's conduct therefore caused
21 and continues to cause economic harm to Plaintiffs and Classes Members.

22 83. These representations by Defendant are therefore an "unlawful"
23 business practice or act under Business and Professions Code Section 17200 *et*
24 *seq.*

25 84. Defendant has thus engaged in unlawful, unfair, and fraudulent
26 business acts entitling Plaintiffs and Classes Members to judgment and equitable
27 relief against Defendant, as set forth in the Prayer for Relief. Additionally,
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1 pursuant to Business and Professions Code section 17203, Plaintiff and Classes
2 Members seek an order requiring Defendant to immediately cease such acts of
3 unlawful, unfair, and fraudulent business practices and requiring Defendant to
4 correct its actions.

5 **THIRD CAUSE OF ACTION**

6 **Violation of Consumer Legal Remedies Act**

7 **(Cal. Civ. Code § 1750 *et seq.*)**

8 **Individually and on behalf of the Classes**

9 85. Plaintiffs incorporate by reference each allegation set forth above
10 herein.

11 86. Defendant's actions as detailed above constitute a violation of the
12 Consumer Legal Remedies Act, Cal. Civ. Code §1770 to the extent that Defendant
13 violated the following provisions of the CLRA:

- 14 a. Representing that goods or services have sponsorship, approval,
15 characteristics, ingredients, uses, benefits, or quantities which they do
16 not have or that a person has a sponsorship, approval, status, affiliation,
17 or connection which he or she does not have. Cal. Civ. Code § 1770(5);
- 18 b. Representing that goods or services are of a particular standard,
19 quality, or grade, or that goods are of a particular style or model, if they
20 are of another. Cal. Civ. Code § 1770(7);
- 21 c. Advertising goods or services with intent not to sell them as advertised;
22 *Cal. Civ. Code §1770(9);*
- 23 d. Representing that a transaction confers or involves rights, remedies, or
24 obligations which it does not have or involve, or which are prohibited
25 by law; *Cal. Civ. Code §1770(14);* and
- 26 e. Representing that the subject of a transaction has been supplied in
27 accordance with a previous representation when it has not; *Cal. Civ.*
28 *Code §1770(16).*

87. On or about October 26, 2017, through their Counsel of record, using

1 certified mail with a return receipt requested, Plaintiffs served Defendant with
2 notice of its violations of the CLRA, and asked that Defendant correct, repair,
3 replace or otherwise rectify the goods and services alleged to be in violation of the
4 CLRA; this correspondence advised Defendant that they must take such action
5 within thirty (30) calendar days, and pointed Defendant to the provisions of the
6 CLRA that Plaintiffs believe to have been violated by Defendant. A true and
7 correct copy of Plaintiffs' CLRA notice letter is attached hereto as Exhibit A.
8 Defendant replied to this correspondence, but refused to address the Class
9 Allegations contained therein and thus refused to timely correct, repair, replace or
10 otherwise rectify the issues raised therein.

11 **MISCELLANEOUS**

12 88. Plaintiffs and Classes Members allege that they have fully complied
13 with all contractual and other legal obligations and fully complied with all
14 conditions precedent to bringing this action or all such obligations or conditions
15 are excused.

16 **REQUEST FOR JURY TRIAL**

17 89. Plaintiffs request a trial by jury as to all claims so triable.

18 **PRAYER FOR RELIEF**

19 90. Plaintiffs, on behalf of themselves and the Classes, request the
20 following relief:

- 21 (a) An order certifying the Classes and appointing Plaintiffs as
22 Representative of the Classes;
- 23 (b) An order certifying the undersigned counsel as Classes
24 Counsel;
- 25 (c) An order requiring Defendant, at its own cost, to notify all
26 Classes Members of the unlawful and deceptive conduct
27 herein;

- 1 (d) An order requiring Defendant to engage in corrective
2 advertising regarding the conduct discussed above;
3 (e) Actual damages suffered by Plaintiffs and Classes Members as
4 applicable from being induced to call Defendant under false
5 pretenses;
6 (f) Punitive damages, as allowable, in an amount determined by
7 the Court or jury;
8 (g) Any and all statutory enhanced damages;
9 (h) All reasonable and necessary attorneys' fees and costs provided
10 by statute, common law or the Court's inherent power;
11 (i) Pre- and post-judgment interest; and
12 (j) All other relief, general or special, legal and equitable, to which
13 Plaintiffs and Classes Members may be justly entitled as
14 deemed by the Court.

15
16 Dated: September 9, 2018

Respectfully submitted,

17 **THE SOLIMAN FIRM**

18
19 By: /s Steven S. Soliman

20 STEVEN S. SOLIMAN, ESQ.

21 Attorney for Plaintiffs Thomas Wheeler
22 and Beth Wheeler
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EXHIBIT A
CLRA Notice Letter

THE SOLIMAN FIRM

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COSTA MESA, CA 92626

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WRITER LICENSED IN:
CALIFORNIA

October 26, 2017

Via U.S. Certified Mail

BEDDING PROS LLC

35799 Industrial Rd.

Livonia, MI 48154

Notice of Violations of CLRA Pursuant to Cal. Civ. Code §§1782(a)(2)

Re: *Thomas Wheeler and Beth Wheeler, individually, and on behalf of all others similarly situated v. Bedding Pros LLC d/b/a/ US MATTRESS.*

To Whom It May Concern:

Please be advised that our office represents Thomas Wheeler and Beth Wheeler ("Plaintiffs"), and other similarly situated individuals, in pursuing class action wide legal claims against Bedding Pros LLC d/b/a US MATTRESS ("Defendant"), for violations of the Consumer Legal Remedies Act ("CLRA") and the California Business and Professions Code §§17200 & 17500 ("BPC").

Thus, please accept this correspondence as notice pursuant to the CLRA, of Defendant's violations thereof. Be advised, you have thirty (30) calendar days from the date of receipt of this notice, to correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of § 1770 of the CLRA, as further outlined below.

Having been formally notified of our representation, we respectfully demand you not contact our client for any reason. Instead, please direct all future contact and correspondence to this office. We reserve the right to seek injunctive relief against you should you fail to honor these directives.

The purpose of this letter is to advise your company of its violations and to quickly resolve the matter of my client's right to compensation for the same, without resorting to expensive and unnecessary litigation. Before additional damages accrue, including needless attorney fees, we should work together expeditiously to correct the inequity that occurred in connection with your company's handling of the matters detailed below.

Please review the violations set forth below and contact our offices immediately, to discuss settlement.

Facts

In or around February 17, 2016, Plaintiffs visited Defendant's website to acquire a new mattress. On Defendant's website, Defendant was advertising a limited time sale in order to induce consumers to purchase mattresses from Defendant. Additionally, Defendant prominently advertised a "100 Night In-Home Trial." There was no further explanation of the "100 Night In-Home Trial" on the home page, mattress page, or purchase page. Plaintiffs selected and purchased a Mattress from Defendant. Upon receiving the mattress, Plaintiffs were immediately dissatisfied with the size of it and contacted Defendant to obtain a return or exchange pursuant to the "100 Night In-Home Trial" guarantee. Upon doing so, Defendant informed Plaintiffs that the 100 Night In-Home Trial was for exchanges only, there were significant up charges associated with the exchange, and that because the sale had ended there would be even more upcharges relating to the increase in price. Upon learning that Defendant had misrepresented its "100 Night In-Home Trial" and would charge them significantly more money, Plaintiffs felt ripped off and cheated by Defendant. Because Plaintiffs could not obtain a refund, Plaintiffs felt pressured and forced to pay approximately \$328 to exchange the Mattress.

Such sales tactics rely on falsities and have a tendency to mislead and deceive a reasonable consumer. Plaintiffs allege that such representations were part of a common scheme to mislead consumers and incentivize them to purchase Defendant's products. In purchasing the Class Products, Plaintiffs relied upon Defendant's representations. Such representations were clearly false because Defendant failed to disclose that it would enter Plaintiffs and other consumers into an installment agreement for products it had represented as free.

CLRA (Cal. Civ. Code §17500 et seq.) Violations

Among other things, the CLRA prohibits the following "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction to result or which results in the sale or lease of goods or services" to a consumer:

1. Section 1770(a)(5) of the CLRA prohibits anyone from "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have"
2. Section 1770(a)(7) of the CLRA prohibits anyone from "[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another."
3. Section 1770(a)(9) of the CLRA prohibits anyone from "[a]dvertising goods or services with intent not to sell them as advertised."
4. Section 1770(a)(14) of the CLRA prohibits anyone from "[r]epresenting that a transaction confers or involves rights, remedies, or obligations which it does not have or involve...."

5. Section 1770(a)(16) of the CLRA prohibits anyone from “[r]epresenting that the subject of a transaction has been supplied in accordance with a previous representation when it has not.”

Further, under the CLRA, a consumer may recover actual damages, an order enjoining any such practices that are prohibited by the CLRA, restitution of property, punitive damages and reasonably attorney’s fees and costs. *Cal. Civ. Code* §1788 (a) and (d).

By engaging in the conduct detailed above, Defendant violated subsections (5), (7), (9), (14), and (16) of the CLRA, thereby entitling Plaintiffs and similarly situated class members to the recovery of actual damages, punitive damages, attorney’s fees and costs.

CPBC & FAL (*Cal. Bus. Prof. Code* §17200 & §17500)

The CPBC §17200 prohibits unlawful, unfair or fraudulent business acts or practices, and subjects anyone engaging in such conduct to a civil penalty of \$2,500 for each violation thereof. *Cal. Bus. Prof. Code* §§17200 and 17206. Further, any person may bring an action to enjoin or restrain any violation of this act and recover actual damages resulting from such violations. *Cal. Bus. Prof. Code* §4381(b)-(c). The CPBC § 17500 prohibits false advertising.

Defendant’s conduct, as detailed above, violate numerous provisions of the CLRA; consequently, said conduct constitutes unlawful business practices. Further, said conduct constitutes fraudulent and unfair business practices, all of which subjects Defendant to statutory penalties of \$2500 per each class member, as well as actual damages, and attorney’s fees and costs.

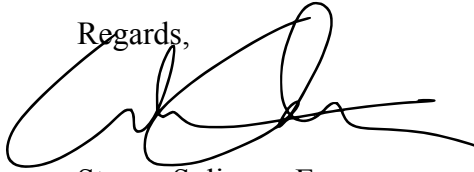
Class Potential

At this stage, Defendant’s fraudulent and deceptive business practices have impacted thousands of consumers throughout the nation. Thus, we anticipate a nation-wide class of thousands of consumers whom Plaintiffs will more than adequately represent. The conduct detailed above is systematic in nature. Thus, certifying a class will be very straightforward. Upon certifying a class, we will seek not only actual damages, but punitive damages and statutory damages, in addition to attorney’s fees and costs.

Demand

We intend to take this matter up as a class action, and therefore expect that any offers to settle this case must contemplate class-wide settlement. Please contact our offices within twenty (21) days of your receipt of this correspondence, to discuss settlement. Also, please be aware of the CLRA notice provided herein.

Regards,

A handwritten signature in black ink, appearing to be 'Steven Soliman', written over the word 'Regards,'.

Steven Soliman, Esq.
Attorney at Law